

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 99-0330

**Withholding Tax
Calendar Year 1995**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE(S)

I. Withholding Tax – Liability of Employer

Authority: IC 6-3-4-13; 45 IAC 3.1-1-109

Taxpayer protests the tax assessed.

II. Tax Administration – Interest

Authority: IC 6-8.1-10-1

Taxpayer protests the interest assessed.

III. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer was assessed withholding tax for its two nonresident shareholders after it was notified by the Department of its obligation to withhold adjusted gross income tax on distributions. Neither response nor filing was forthcoming; therefore the department issued its investigative billing for 1995 upon the corporate tax filing. A Subchapter S corporation is required to withhold state income tax at the rate of 3.4 percent on the amount it pays or credits to any of its nonresident and part-year nonresident individual shareholders as dividends or as their share of the corporation's undistributed taxable income.

The corporation is required to issue a WH-18 to nonresident shareholders showing the distribution and amount of state and county tax withheld. A copy of the WH-18 should be submitted to the Department of Revenue with Form WH-3 (Annual Withholding Reconciliation) by the end of February following the close of the calendar year. Taxpayer is required to withhold Indiana adjusted gross income tax on distributions to all nonresident shareholders regardless of their individual filing requirement and status

under IC 6-3-4-13.

The investigation adjusted withholding tax for payments made to nonresident shareholders that filed no returns in Indiana.

ISSUE

Withholding Tax – Liability of Employer

DISCUSSION

Taxpayer failed to withhold tax from nonresident shareholders' distribution.

Taxpayer's only argument is that it withheld tax from an employee who worked only in January. IC 6-3-4-13 (a) states:

Every corporation which is exempt from tax under IC 6-3 pursuant to IC 6-3-2-2.8(2) shall, at the time that it pays or credits amounts to any of its nonresident shareholders as dividends or as their share of the corporation's undistributed taxable income, deduct and retain therefrom the amount prescribed in the withholding instructions referred to in section 8 of this chapter. Such corporation so paying or crediting any nonresident shareholder:

- (1) shall be liable to the state of Indiana for the payment of tax required to be deducted and retained under this section and shall not be liable to such shareholder for the amount deducted from such payment or credit and paid over in compliance or intended compliance with this section; and
- (2) shall make return of and payment to the department monthly whenever the amount of tax due under IC 6-3 and IC 6-3.5 exceeds an aggregate amount of fifty dollars (\$50) per month with such payment due on the thirtieth day of the following month, unless an earlier date is specified by section 8.1 of this chapter.

Taxpayer confuses the issue between employee wages and corporate distributions. Corporate distributions whether distributed or undistributed do not fall under salaries, wages, and commissions subject to withholding under 45 IAC 3.1-1-109.

The auditor assessed tax to the S Corporation for distributions to nonresident shareholders that filed no returns in Indiana.

FINDING

Taxpayer's protest is denied.

ISSUE

II. **Tax Administration** – Interest

Taxpayer protests the imposition of interest.

DISCUSSION

The department has no authority to waive interest.

FINDING

Taxpayer's protest is denied.

ISSUE

III. **Tax Administration** – Penalty

Taxpayer protests the imposition of penalty.

DISCUSSION

In its letter dated May 27, 1999 taxpayer requests that the department waive the penalty charged on the modified liability. The liability is not modified, the taxpayer has not provided reasonable cause for failing to file its WH-18, and failed to respond to the department's request for the preparation of a return. The department prepared the returns that are subject to penalty under IC 6-8.1-10-3.

FINDING

Taxpayer's protest is denied.

CONCLUSION

Taxpayer's protest is denied for Issues I, II, and III.

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